



0000148405

ORIGINAL

RECEIVED RECEIVED

2013 SEP 20 A 10:31

SEP 18 2013

1 *Law Office of Keith A. Singer, P.L.L.C.*
 2 1325 North Wilmot, Suite 200
 3 Tucson, Arizona 85712
 4 (520) 795-1800; *KAS@AZBAR.ORG*
 PCC: 65275; State Bar No. 018921
 Attorney for Complainant

CORP COMMISSION
DOCKET CONTROLARIZONA CORP. COMM
100 W CONGRESS STE 218 TUCSON AZ 85704

BEFORE THE ARIZONA CORPORATION COMMISSION

DANIEL SINGER

Docket Number: E-01933A-12-0400

Complainant,

COMPLAINANT'S PRE-HEARING
STATEMENT

vs.

TUCSON ELECTRIC POWER COMPANY,

COMMISSIONERS:
 Gary Pierce, Chairman
 Bob Stump
 Sandra D. Kennedy
 Paul Newman
 Brenda Burns

Respondent.

The Complainant, through counsel, submits his pre-hearing statement as follows:

I. Complainant may call the following witnesses:

1. Complainant will testify to the following:

A. Complainant contends that T.E.P.'s meter failed, resulting in excessive charges in the 4/30/12 and 5/29/12 bills.

B. Based on T.E.P.'s admission, "on March 26, 2012, at about 4:00 p.m., the load increased by four to five times the load it was previously running." (T.E.P.'s response, page 3 lines 7, 8). T.E.P. further acknowledges "the indicated load remained consistently at that level until about noon on May 12, 2012..." (T.E.P.'s response, page 3 lines 9, 10). T.E.P. further acknowledges and alleges "On May 12, 2012 the load begins to lower and returns to pre-spike levels prior to the meter being removed and exchanged on May 17, 2012." (T.E.P.'s response, page 3 lines 11, 12)

C. In light of T.E.P.'s response, either Complainant's office building suddenly increased its electrical usage on March 23, 2012 by a factor of 4-5 times for a period

EAS

1 lasting one month, then gradually reduced the usage to double the historic usage, until reducing to
2 historic levels right before T.E.P. replaced the meter, or, Complainants office building did not
3 increase its historic electrical usage as suggested by T.E.P. and instead, the meter inaccurately
4 reflected a surge and eventual return to normal load level, before being replaced.

5 D. Complainant will testify the subject office building did not experience an
6 increase in electrical usage beyond normal levels between March 23, 2012 and May 12, 2012.

7 E. According to T.E.P.'s 4/30/12 bill, reflecting usage from 3/29/12 - 4/27/12, the
8 average temperature was 70 degrees. Complainant will testify that to the extent the largest usage
9 of electricity at Complainant's building is from air conditioning, it was too early in the season, and
10 the average temperature too low, to support the notion that Complainant's air conditioning usage
11 increased in early Spring to more than three times the level of recorded usage during Tucson's
12 hottest summer months.

13 F. Complainant will further testify and evidence that occupancy levels in the
14 subject building are 30%-40% lower for 2012 than historic levels, resulting in lower electrical bills
15 generally due to lower usage. A 1.5 month increase in electric usage by a factor of 4-5 times, as
16 alleged by T.E.P., is inconsistent with the building's actual occupancy during the subject period.

17 G. As a result of decreased occupancy in 2012, Complainant will testify that six
18 H.V.A.C. units servicing unoccupied parts of the building were off-line during the subject period.
19 After the meter was replaced, during the latter part of the summer of 2012, several of previously
20 unused units were brought back on line and more of the building was air conditioned, with greater
21 electrical load. However, the electric bills for June, July, August, and September of 2012 reflect
22 historic usage and associated charges and are all substantially lower than that reflected in the April,
23 2012 and May, 2012 bills.

24 H. Complainant will testify the subject building was constructed in the 1980's.
25 Since construction and during the period in question, there were no material changes to its electrical
26 infrastructure or usage, except for the disputed billing periods which are the subject of the
27 complaint, in which T.E.P contends the electrical usage surged to 4-5 times normal use, then
28 gradually returned to normal levels just prior to replacement of the meter.

1 I. Complainant will testify that he has never received an electric bill for the
2 subject building in excess of \$3,400.00 per month, even during the hottest summer month, except
3 for the disputed period, when the bills were \$6,003.63 on 4/30/12 and \$4,477.81 on 5/29/12. In the
4 summer months after the meter was replaced, the bills were \$2,920.28 on 6/28/12 and \$3,091.49 on
5 7/30/12 in spite of an increase in exterior temperature during those months as reflected in the T.E.P.
6 bills for said period.

7 J. Complainant will further testify that when Complainant spoke with T.E.P.'s
8 customer service representative over the phone, Complainant was informed by T.E.P. that it could
9 not guarantee its meter did not malfunction. Similarly, when Complainant contacted ITRON, the
10 manufacturer of the meter, the customer service representative stated that malfunctions of the
11 subject meter are rare, but they have been known to occur.

12 K. To the extent T.E.P. contends Complainant's usage must have increased by a
13 factor of 4-5 times during the disputed period, Complainant will testify that it should be incumbent
14 on T.E.P. to explain how such a dramatic increase in usage occurred in sudden contradiction to over
15 twenty years of stable, consistent usage by Complainant's office building and in spite of a reduction
16 in occupancy during the subject period. Complainant will further testify that is also incumbent on
17 T.E.P. to explain how the alleged load started reducing to historic levels after Complainant brought
18 the matter to T.E.P.'s attention and then demanded the meter be replaced, and how the surge
19 dropped to normal levels just before T.E.P. replaced the meter in spite of no change in occupancy
20 during the subject period, as compared to the months before and after.

21 L. Complainant will further testify that he was erroneously charged \$144.00 to
22 replace the malfunctioning meter. This amount should be credited to Complainant's account with
23 T.E.P.

24 M. The difference between the erroneous 2012 bills in the amount of \$6,003.63
25 on 4/30/12 and \$4,477.81 on 5/29/12 and the corresponding bills for the same period in 2011 (
26 \$1,415.35 for April, 2011 and \$1,745.66 for May, 2011) is \$7,320.43. Complainant contends the
27 excess charge in the amount of \$7,320.43 should be credited to Complainant's account with T.E.P.
28 and any late fees associated with said overcharge should be waived.

1 2. Gary Bonebright, Owner, Advanced Controls Corporation, (520) 620-6656, 626 West
2 Flores Street, Tucson, Arizona 85705.

3 A. Mr. Bonebright will testify regarding his review of the subject building plans
4 for the HVAC system and his examination of the associated HVAC mechanical equipment.

5 B. Mr. Bonebright will further testify that he has determined there was no fault
6 or malfunction in the subject building's HVAC system which would explain T.E.P.'s alleged spike
7 in the building's electrical load.

8 C. Mr. Bonebright will further testify that the subject building did not likely
9 increase its draw with respect to HVAC in the manner indicated by T.E.P.'s faulty meter.

10 3. Scott Heard, Advanced Controls Corporation, HVAC Service Manager, (520)
11 620-6656, 626 West Flores Street, Tucson, Arizona 85705.

12 A. Mr. Heard will testify regarding his review of the subject building's HVAC
13 system and his examination of the associated HVAC mechanical equipment.

14 B. Mr. Heard will further testify that he has determined there was no fault
15 or malfunction in the subject building's HVAC system which would explain T.E.P.'s alleged spike
16 in the building's electrical load.

17 C. Mr. Heard will further testify that he was called to the building on various
18 occasions prior to, during, and after the subject period, and based on his observations of the the
19 subject building, it likely did not increase its draw with respect to HVAC in the manner indicated
20 by T.E.P.'s faulty meter.

21 D. Mr. Heard will further testify to his observation that numerous HVAC air
22 exchange units in the subject building were off-line during the subject period and this should have
23 resulted in a decreased electrical load, rather an a substantially increased load.

24 4. Jim Johns, Owner/Operator, R.P.M. Electric, 2111 E. Monte Vista Drive,
25 Tucson, Arizona 85719, (520) 444-3744.

26 A. Mr. Johns will testify regarding his historic knowledge and interaction
27 with the subject building's electrical system and his review of the subject building's electrical
28 system in response to the increased electric bills during the subject period.

 B. Mr. Johns will further testify that he has determined there was no fault

1 or malfunction in the subject building's electrical system which would explain T.E.P.'s alleged spike
2 in the building's electrical load, except for his opinion of a fault in the meter.

3 C. Mr. Johns will further testify that he was called to the building on various
4 occasions prior to, during, and after the subject period, and based on his observations of the subject
5 building, it likely did not increase its draw with respect to electrical usage in the manner indicated
6 by T.E.P.'s faulty meter.

7 D. Mr. Johns will further testify that the building's electrical usage during the
8 subject period should have reduced as a result of decreased occupancy, rather than the substantial
9 increase in electrical usage alleged by T.E.P.

10 E. Mr. Johns will further testify that the building's fault protection system would
11 have engaged if the load reached the levels alleged by T.E.P. and will testify to his observation that
12 no such fault occurred to the building's fault protection system.

13 F. Mr. Johns will further testify that the load alleged by T.E.P, for the duration
14 alleged by T.E.P, substantially exceeded the reasonable potential load demanded by the building at
15 full occupancy at any time of year.

16 G. Mr. Johns will testify that in his professional experience, he has personally
17 observed other similar electric meters installed by T.E.P. fail in the manner experienced by
18 Complainant.

19 H. Mr. Johns will further testify that based on his professional interactions with
20 T.E.P. field representatives, it is his professional opinion that meters such as the one at issue in this
21 matter do occasionally fail in the manner experienced by Complainant.

22 5. Lo, Lehman, Lehman Engineering, P. O. Box 29160, Richmond, Virginia
23 23242, (804) 390-9288.

24 A. Mr. Lehman will testify to his professional opinion that the source of the
25 increase electrical charges experienced by Complainant was likely a faulty meter.

26 6. Any witness disclosed by Respondent.

27 ::

28 ::

1 II. Complainant may seek to admit the following listed evidence, which has been
2 disclosed or is already in the possession of T.E.P.

3 1. Complainant's statement of occupancy, square footage, and T.E.P. bills for
4 subject and comparison periods.

5 2. Letter from T.E.P. 6/6/12 to Complainant re: subject problem (WR#249911)

6 3. T.E.P. billing and electrical usage statements and data summaries for the
7 periods 2011 to current.

8 4. Letter from T.E.P. to Complainant 5/23/12.

9 5. Exhibits disclosed by Respondent.

10
11 Dated this 17 day of September, 2013

12 **Law Office of Keith A. Singer, P.L.L.C.**

13 

14 Keith A. Singer, Attorney for Petitioner

15 Original hereof hand-delivered this
16 17 day of September, 2013 to:

17 Hearing Division
18 400 W. Congress, Suite 218
19 Tucson, Arizona 85701

20 Copy hereof mailed this
21 17 day of September, 2013 to:

22 Jason D. Gellman, Esq.
23 Roshka, De-Wulf, & Patten, PLC
24 400 East Van Buren Street, Suite 800
25 Phoenix, Arizona 85004
26 Attorney for the Tucson Electric Power Company

27 Kimberly A. Ruht, Esq.
28 88 East Broadway, MS HQE910
P.O. Box 711
Tucson, Arizona 85702
Counsel for TEP

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

1 Steven M. Olea, Director
2 Utilities Division
3 Arizona Corporation Commission
4 1200 Washington Street
5 Phoenix, Arizona 85007

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
By: KAS/EZ Messenger